

Attorney Docket No.: F7745(V)  
Serial No.: 10/582,281  
Filed: June 9, 2006  
Confirmation No.: 2927

## **REMARKS**

### ***Amendments to the Claims***

Claim 1-10 and 12-14 have been canceled without prejudice.

Independent claim 11 has been amended without prejudice to more clearly and definitely recite preferred embodiments of applicants' process.

The preamble of amended claim 11 specifies that the process is directed to the preparation of a water-in-oil emulsion food product with improved spattering behaviour (page 1, lines 6-10) which comprise porous powderous vegetable matter having a volume weighted mean particle diameter ( $d_{4,3}$ ) not exceeding 0.5 mm.

The amended claim further specifies that process comprises first preparing a water-in-oil emulsion in at least one process step in which the pressure is 0.2mPa or more (this step corresponds to the embodiments disclosed in Figures 1 and 2 and discussed in Examples 22-23 on pages 21-24 combined with the condition disclosed in original claim 11 and page 4, lines 1-4). The water-in-oil emulsion is then admixed with a porous powderous vegetable material in an amount of 0.1 – 5 wt.% on oil. The powderous vegetable matter is a powder formed by milling vegetable matter which has been extracted with an organic solvent to a powder having a particle size not exceeding 0.5mm (page 3, line 32 to page 4, line 1). The process further includes the condition that the porous powderous vegetable matter is not subjected to any pressure of 0.20 mPa or more during the process (page 4, lines 3-4), e.g., not subjected to high shear in the A- units, as in Examples 22-23 and Figures 1-2.

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Amended claim 15 specifies that the vegetable matter used in step ii) has been pre-milled, oil-extracted and then milled again to prepare the porous powdered vegetable matter.

Claims 18-27 which depend from claim 11 are new.

Claim 18 specifies that the porous powderous vegetable matter is made from nuts, sunflower seeds, kernels, pits and cellulose (page 6, lines 4-9).

Claim 19 specifies that the porous powderous vegetable matter is evenly dispersed throughout one or more phases of the water-in-oil emulsion (original claim 2).

Claim 20 specifies that the volume weighted mean particle diameter ( $d_{4,3}$ ) of the porous powderous vegetable matter does not exceed 0.1 mm (page 6, line 13).

Claim 21 specifies that 0.4 – 1.0 wt.% of the porous powderous vegetable matter is admixed with the water-in-oil emulsion (original claim 5).

Claim 22 specifies that the porous powderous vegetable matter consists of milled kernels of olives (page 7, lines 26-27).

Claim 23 specifies that the porous powderous vegetable matter consists of milled sunflower seeds (page 7, lines 27-28).

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Claim 24 specifies that the porous powderous vegetable matter consists of milled soybeans (page 7, line 28).

Claim 25 specifies that the porous powderous vegetable matter consists of milled nuts selected from the group consisting of pine tree nuts, almonds, ground nuts, walnuts and cashew nuts (page 6, lines 6-7).

Claim 26 specifies that the water-in-oil emulsion is substantially free from cooking salt (page 7, lines 18-19).

Claim 27 specifies that the volume weighted mean particle diameter ( $d_{4,3}$ ) of the porous powderous vegetable matter does not exceed 0.04 mm (page 6, line 14).

### ***Claims Rejection under 35 USC §112***

Claims 4 and 11-17 were rejected under 35 USC §112, second paragraph as being indefinite.

Claim 4 and claims 12-14 have been canceled.

Claim 11 has been amended to positively recite the process steps and limitations encompassed by a preferred embodiment of the invention.

Claim 12-17 were held to be unclear as to what process steps are included.

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Claim 15 has been amended to more clearly define the nature of the porous powdery vegetable matter used in this embodiment. Specifically the powder is formed from vegetable matter that has been pre-milled, oil-extracted and then milled again. The claim language makes it clear that the processes of extraction, premilling and remilling of the vegetable material are not essential components of the process but rather relate to the specific material used.

Applicants submit that the metes and bounds of amended claim 11 and 15-17 are both clear and definite to the standard required by 35 USC §112, second paragraph and respectfully request the Examiner to reconsider and withdraw the §112 rejection.

#### ***Claims Rejection under 35 USC §103***

**Claims 1-5, and 8-10 were rejected under 35USC §103(a) as being unpatentable over Pardum (US 3,245,802).**

Claims 1-10 have been canceled without prejudice and all pending claims are directed to a process. Applicants assume that the 103(a) rejection over Pardum is rendered moot.

**Claims 1-10 were rejected under 35USC §103(a) as being unpatentable over Van Buren (US 6,942,890).**

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Claims 1-10 have been canceled without prejudice and all pending claims are directed to a process. Applicants assume the 103(a) rejection over Van Buren is rendered moot. Nevertheless, applicants' wish to clarify the record concerning what Van Buren teaches.

The Examiner asserted that "Van Buren discloses fortifying olive oil with olive Kernel". Applicants' respectfully disagree. Van Buren specifically discloses fortifying food products with olive fruit ingredients: specifically solid matter derived from olive fruit (abstract). Van Buren teaches at column 3, lines 16 that "preferably the kernals are left out from the solid matter. Furthermore, in all the Examples taught by Van Buren, the kernels of the olives were removed and only the remaining flesh was used (column 6, lines 11-12).

**Claims 1, 5 and 7 were rejected under 35USC §103(a) as being unpatentable over Sipila (US 2003/0165607).**

Claims 1-10 have been canceled without prejudice and all pending claims are directed to a process. Applicants assume that the 103(a) rejection over Sipila is rendered moot.

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***Conclusions***

In light of the above amendments which applicants submit overcomes the §112, second paragraph rejection of claim 11 and claims depending there from, applicants respectfully request that the application be allowed to issue as a patent.

In the event any questions remain, the Patent Office is kindly invited to contact the undersigned agent at its earliest convenience.

Respectfully submitted,

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